

Note from the Attorney General's Office:

1958 Op. Att'y Gen. No. 58-2201 was overruled by 1980 Op. Att'y Gen. No. 80-036.

2201

WELFARE, ADMINISTRATION—§329.091 R.C.; ENACTED TO PREVENT AND PUNISH FRAUD IN THE OPERATION OF ALL THE PUBLIC ASSISTANCE PROGRAMS—§5113.08 R.C.

SYLLABUS:

Section 329.091, Revised Code, is applicable to all counties of the state whether or not a county department of welfare has been established in any such county as provided in Section 329.01, Revised Code.

Columbus, Ohio, June 5, 1958

Hon. Everett Burton, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 329.091 of the Revised Code of Ohio provides in part as follows:

“‘Before the thirtieth day of January, April, July and October of each year each county, city or state authority, administration, department, board, division or office responsible by law for the administration of the public assistance programs of aid for the aged, aid for the blind, aid for dependent children, aid for the permanently and totally disabled and poor relief shall file a report with the auditor of the county listing the names of all recipients to whom such agency has granted, paid or authorized payment of public assistance during the preceding fiscal quarter year of such agency and the amounts paid to each.

“‘The auditor, chairman of the board of county commissioners and the presiding judge of the juvenile court of each

county, or deputies designated by them, are hereby designated and constituted the public assistance examining committee who shall serve during their terms of office, or at the pleasure of such appointing officers, and shall organize by electing a chairman and secretary on or before the thirtieth day of October, 1953. The committee shall meet quarterly, and at other times at the call of the chairman. A majority of said committee shall be necessary for a decision. Said committee shall examine the reports of such public assistance agencies upon the filing thereof, may examine any signed, written information filed by an elector of the county and may examine such other information contained in the files and records of such public assistance agencies as they may deem necessary to determine whether or not any grants or payments of public assistance funds have been fraudulently made or received, or are in violation of law or the regulations of the department of public welfare.

“In case the committee shall determine that there is reasonable cause to suppose that any grants or payments of public assistance funds have been fraudulently made or received or are in violation of law or the regulations of the department of public welfare, it shall certify its determination thereof, together with such facts and records as it deems pertinent, to the prosecuting attorney and to the director of the department of public welfare of Ohio each of whom shall take action toward the prosecution for and correction of such violations as provided by law.’

“The following question has been raised: Does this section apply in a county in which no county department of welfare has been established pursuant to Ohio Revised Code Section 329.01?

“Since this section deals with the procedure to be followed in the prosecution of offenses resulting from fraudulently obtaining grants or payments of public assistance, we will appreciate your opinion with respect thereto.”

Your query is prompted, I assume, by the circumstance that this section appears in Chapter 329., Revised Code, which relates chiefly to the creation and operation of a county department of welfare. Section 329.091, *supra*, was enacted in 1953, in Amended Substitute Senate Bill No. 66, 100th General Assembly. The title of that bill, 125 Ohio Laws, 672, is as follows:

“To amend section 5113.08 of the Revised Code and to enact sections 329.091 and 329.99 of the Revised Code, to provide for a central clearing office, reports of county, state and federal expenditures of funds for public assistance and for the examination of such reports and for prosecution of violations of law and regulations disclosed thereby, and to repeal section 5113.08 of the Revised Code.”

This bill also amended Section 5113.08, Revised Code, to read as follows:

“Sec. 5113.08. The relief authority of each county shall maintain a central clearing office * * *. Such office shall maintain a record showing the names of all persons in the county who are receiving relief or other public assistance payments from * * * the county, city or state authority, administration, department, board, division or officer responsible by law for the administration of the public assistance programs of aid for the aged, aid for the blind, aid for dependent children, aid for the permanently and totally disabled and poor relief and it shall be the duty of such administrative agencies to report to the central clearing office the name of each person receiving public assistance under the program for which it is responsible in such form and at such intervals as may be required by the department of public welfare of Ohio, and such other information as the department directs. * * * The department may approve * * * the operation of such office by a private agency in lieu of one operated by the county. * * * Each administrative agency shall pay its proportionate share of the cost of operation of the central clearing office, as determined by the department of public welfare of Ohio.

“The central clearing office, upon request of any public assistance agency herein specified or its authorized employees, shall report the name of any recipient of public assistance and the agencies granting or paying such assistance as shown by its records.

“Before granting any application for public assistance to any person the administrative agency shall determine from the records of the central clearing office whether such person is receiving public assistance from any other administrative agency and shall determine whether such grant is in violation of law or the regulations of the department of public welfare. In case of emergency a temporary grant or increase may be allowed subject to the determination of its legality. For the purpose of making such determination, each administrative agency shall disclose to any other public assistance agency and its authorized employees relevant information contained in its files and records pertaining to any recipient of public assistance.”

The evident legislative purpose in the enactment of such new section and the amendment of Section 5113.08, *supra*, is to prevent and punish fraud in the operation of *all* of the public assistance programs therein designated by whatever “authority, administration, department, board, division or officer” the same is administered. The naming of such programs, and the reference to the several authorities, officers, *etc.*, responsible for

their administration is wholly inconsistent with the view that the act was designed to apply only where all such programs are administered by a county department of welfare. Accordingly, while it is not wholly clear why the General Assembly chose to place such new section in Chapter 329., Revised Code, I think it is clear that the fact that it did so does not justify the inference that its application is limited to the extent you suggest.

It is my opinion, therefore, that Section 329.091, Revised Code, is applicable to all counties of the state whether or not a county department of welfare has been established in any such county as provided in Section 329.01, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General